



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/856,133	08/24/2001	Deborah Ann Lewis	14621	4006

7590 07/30/2003

Scully Scott Murphy & Presser  
400 Garden City Plaza  
Garden City, NY 11530

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	15

DATE MAILED: 07/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/856,133	LEWIS ET AL.	
	Examiner Lien T Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 26 June 2003.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1,3-11,13-22 and 24-33 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 1,3-11,24,25 and 29 is/are allowed.

6) Claim(s) 13-22, 26-28 and 30-33 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

Claims 13-22, 26-28,30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al for the same reason set forth in paragraph 6 of paper no7.

In the amendment filed June 26, 2003, applicant argues Lewis et al disclose a process that is totally different from the claimed BCB making process because there is no teaching or suggestion that the flakes prepared therein would adhere to each other. This argument is not persuasive. Lewis et al disclose other related food products such as granola bars, confectionery and so on can be prepared. Thus, it is obvious that the flakes can be made to adhere to each other in order to make a bar. It is well known in the art that granola bars are made of cereal grains adhering together. Lewis et al also teach the cereal grains can be toasted and the grains can be used to make other cereal product. Thus, it would have been obvious to one skilled in the art to make other cereal product using the grains to obtain the benefit of the waxy grains. If the flakes can be adhered together to make a bar, the flakes can be agglomerated to make other cereal product.

Claims 1-11,24-25 and 29 are allowable over the prior art because Lewis et al do not disclose the degree of gelatinization claimed and there is no suggestion to do so.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

July 27, 2003

  
LIEN TRAN  
PRIMARY EXAMINER  
Group 1707